

CRIMINAL–LEGAL SCIENCES

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THE DEVELOPMENT OF SCIENTIFIC PERCEPTIONS OF CRIMINALISTIC TACTICS AND MODERN TRENDS

Summary. *The article is devoted to the history of the origin of tactical beginnings in the study of a criminal for criminalistic purposes and the further formation of a system of scientific knowledge in crime counteraction. The development of criminal tactics and its transformation into investigative tactics, and then forensic, are traced. The role of forensic tactics in the system of criminalistics knowledge is revealed.*

Attention is paid to changing the subject of criminalistic tactics in modern conditions, the reasons for such changes are identified. The content and structure of criminalistic tactics are due to the need to provide different specialists (investigator, prosecutor, investigating judge, parties to criminal proceedings, court, etc.) with tactical measures. The interrelation of legislative changes, procedural instructions and tactical recommendations has been established. An activity approach to criminalistic tactics is proposed and the necessity of isolating its branches (advocatory, judicial, investigative, inquiry) is substantiated.

The structural elements of criminalistic tactics (tactical technique, tactical combination, tactical operation, etc.) are considered. The role of psychological influence in a tactical tool is determined. Attention is focused on the limits of admissibility and legitimacy of influence for the purposes of criminal proceedings.

Key words. *Criminalistic tactics, investigative tactics, advocatory tactics, judicial tactics, trends in criminalistic tactics, tactical measure, tactical technique, psychological influence, tactical combination, tactical operation.*

Introduction

The history of criminalistic knowledge can be traced back to the emergence

and formation of the first types of state and law, when certain rules of conduct, folklaws and laws were established and

violated. A. Hellwig writes that crimes, in other words, illegal acts that are committed under the threat of punishment by the state or other public organizations, have always existed and will continue to exist, even in the ideal “state of the future.” As time went on, the range of acts recognized as crimes changed, since the recognition of the extent to which an act violates the interests of society depends entirely on the existing needs and on certain ethical, religious, political and economic views¹ in each particular era.

Specific recommendations of criminalistic nature have been known for a long time and are found in legislative monuments. Back in ancient times, there were attempts to do tests, based on the regular patterns of psychophysiological reactions of the human body (ordeals or testing by “water”, testing by “hot iron”, “rice”, “tam tam”, etc.).

The first means of forensic tactics were based on physical and mental abuse of a person. A confession was obtained with the help of torture and torments, the so-called “enhanced interrogation” was applied. Such interrogation was carried out using «scientific and technical” (criminalistic) means – thumbscrews, pigeonholes, a choke pear, a “Spanish boot”, rope winches for stretching the body, a pillory, a special wheel, etc. Mental violence was also widely used – “intimidation with words”, persistent inquiries, posing questions, demonstrating torture instruments and explaining

their purpose, obtaining testimony in the presence of a corpse, etc.

The emergence of forensic tactics is inextricably linked with the history of the development of scientific ideas about criminalistics as a science. The formation of forensic science was based on borrowing data from various sciences (natural, technical, humanitarian, etc.) and was directed to the optimal solution of the tasks of combating crime. In particular, the attempts to use data from various sciences for combatting crime led to the emergence of integrated scientific knowledge described by the term “criminalistics”, the use of promising achievements of science and technology in the fight against crime.

From criminal tactics – to criminalistics

As criminalistics was developing as an independent branch of knowledge, tactics were considered as part of the police (criminal) techniques. E. Locard emphasizes that “we will call police technique as the totality of methods borrowed from biology, physics, chemistry and in very small quantities from mathematics (cryptography theorems), which give the opportunity to obtain material evidence and prove a crime. It is striking that this definition encompasses both forensic medicine, forensic chemistry and the psychology of testimony”². P. Liublinsky distinguishes six research areas in criminalistics. One of which was defined as a “study of the methods of committing various crimes and ways of de-

¹ Гельвиг А. Современная криминалистика (методы расследования преступлений) / под ред. П. И. Люблинского. Москва: Право и жизнь, 1925. С. 9.

² Локар Э. Руководство по криминалистике / пер. С. В. Познышева и Н. В. Терзиева. Москва: Юрид. изд-во НКЮ СССР, 1941. С. 9.

tecting them (criminal tactics)¹.

The first ideas about criminal tactics were related to the study of the specifics of the professional criminals' activities, the study of secret methods of their communication, methods of committing crimes, information about the behavior of the criminal before and after the commission of a crime, methods of solving crimes, search for criminals and their detention; there were also recommendations in regard to investigatory actions (inspection of the crime scene and discovery of traces, search, interrogation of the accused and witnesses, comparison of handwritings, etc.)². I. Yakimov points out that criminal tactics study criminals and methods of committing crimes in order to work out the best methods for their detection. For such purposes, scientific material, collected and developed with the help of criminal techniques³, is used.

The formation of criminal (criminalistic) tactics is conditioned by the implementation of psychological knowledge in the sphere of combating crime. The data of psychological science traditionally is included as a source of criminal-

istic tactics in its genesis. Its special role is determined by the fact that tactical methods are directly or indirectly aimed at a specific object – the human psyche; their development and formation are based on the psychological characteristics of the processes of perception, memory, thinking, certain properties and states: their content and implementation mechanism are conditioned by the need to exert psychological influence in order to establish psychological contact, update the forgotten, expose lies in testimony, etc.⁴. In the late 19th and early 20th centuries, the study of the psychology of testimony and the testimony of the accused became an independent trend in the development of criminalistics.

The development of criminalistic tactics is characterized by the irregularity and hyperbolization of its individual parts. At various periods of time there was a fascination with the tactics of criminal activity, the study of the personality and the type of criminal, and then vice versa, a bias towards investigative tactics and the development of methods of investigative activity⁵. There are various terminological approaches to the designation of tactics in the history of criminalistics: criminal tactics, investigative tactics, criminalistic tactics. In this case, there were both terminological and fundamental changes.

¹ Люблинский П. И. Предметъ и значеніе ученія о доказательствахъ...//Дж. Стифенъ. Очеркъ доказательственного права. Санкт-Петербург: Сенатская типографія, 1910. С. XX.

² Штибер В., Шнейкерт Г. Практическое руководство для работников уголовного розыска / пер. с нем. Москва: Гостехиздат, 1925. С. 35–190; Якимов И. Н. Криминалистика. Руководство по уголовной технике и тактике. Москва, 1925. 430 с.

³ Якимов И. Н. Криминалистика. Уголовная тактика. 2-е изд. перераб. и доп. Москва: НКВД РСФСР, 1929. С. 3.

⁴ Шепитько В. Ю. Теория криминалистической тактики: монография. Харьков: Гриф, 2002. С. 37.

⁵ Шепитько В. Ю. Криміналістична тактика (системно-структурний аналіз): монографія. Харків: Харків юридичний, 2007. С. 5.

The subject of criminalistic tactics and its transformation

In modern criminalistics, there are various approaches to the definition of the concept of criminalistic tactics. A. Эксархопуло notes that researchers fairly recently started using the term “forensic tactics” in criminalistics to denote the relevant sphere of science and training course. Previously, this area of criminalistics was called investigative tactics, since the tactical recommendations proposed in it were developed mainly for use in the framework of the preliminary investigation. However, both investigative practice, operational work (forensic intelligence activities) and the work of the judicial authorities required scientific support for taking the optimal course of action¹.

Under these conditions, new definitions of criminalistic tactics were suggested. In particular, there is an opinion that criminalistic tactics are a system of scientific propositions and recommendations developed on the basis of organizing and planning preliminary and judicial investigations, defining the line of conduct for persons, who provide proofs and methods of specific investigative and judicial actions aimed at collecting and investigating evidence to establish the causes and conditions conducive to the commission and concealment of crimes². Other researchers define criminalistic

tactics as an area of criminalistics, which includes a system of theoretical principles and practical recommendations for taking the optimal course of actions for persons, who conduct preliminary investigations, as well as judicial review of criminal cases, based on the norms and principles of the criminal procedure³. Other authors point out that criminalistic tactics, as a subdiscipline of criminalistics, explores the patterns of organization and implementation of *judicial, investigative and expert activities* in order to develop general scientifically based recommendations to improve its efficiency (*italics added – V. Sh.*) in accordance with the law⁴.

The approaches to understanding the nature of criminalistic tactics by individual criminalists are highly controversial and do not correspond to the objective state of affairs. So, S. Lavrukhin, who supports a new model of criminalistics, restricts criminalistic tactics only to algorithms of investigative actions⁵. In our opinion, criminalistic tactics cover not only the problems of optimization of investigative (search) actions. It is much wider in scope; its recommendations are not limited to the tactics of investigation of crimes. Tactics also cannot be lim-

¹ Эксархопуло А. А. Криминалистика: учебник. Санкт-Петербург, 2009. С. 445.

² Аверьянова Т. В., Белкин Р. С., Корухов Ю. Г., Россинская Е. Р. Криминалистика: учебник для вузов / под ред. Р. С. Белкина. Москва: Норма, 2003. С. 453.

³ Якушин С. Ю. Криминалистическая тактика: вопросы теории и практики: учеб. пособие. Казань: Казан. гос. ун-т, 2010. С. 35.

⁴ Курс криминалистики: В 3 т. Т. 1. Общетеоретические вопросы. Криминалистическая техника. Криминалистическая тактика / под ред. О. Н. Коршуновой и А. А. Степанова. Санкт-Петербург: «Юридический центр Пресс», 2004. С. 468.

⁵ Лаврухин С. В. Система криминалистики // Государство и право. 1999. № 8. С. 31–36.

ited to the framework of algorithms and programs. Tactics is not always a ready-made scheme, it is dynamic, situationally dependent, individual in each specific case. Tactics should not be reduced to templates only. There is a variety of techniques, approaches, methods matching their types, forms and content¹.

In modern conditions, criminalistic tactics are not limited to the tactics of individual investigative actions. In the system of tactical means, typical tactical (criminalistic) operations hold a special place – the most effective complexes of investigative (search) and covert investigative (search) actions, operational investigative, organizational and other measures in relation to intermediate investigative tasks and investigative situations. The development and implementation of tactical operations should help optimize the detection and investigation of crimes, and also implies the establishment of interconnection and interdependence between individual investigative (investigative) actions, organizational and other activities.

Changes in the legal field, the model of criminal proceedings, the “revision” of traditional institutions of criminal law and procedure affect the content of criminalistic tactics. This problem is of particular relevance due to harmonization of the criminal procedure mechanism and bringing it in line with international and European standards, introducing the adversarial principle of the parties, en-

suring the proper balance of public and private interests. Criminalistics (and its subdiscipline, criminalistic tactics) performs, in a sense, the security function of a criminal or other judicial procedure. The development and implementation of criminalistic tools depends on their particular consumer (investigator, investigating judge, prosecutor, barrister, judge, etc.), the form of the criminal process, the procedure for conducting investigative (search) and judicial actions.

A significant change in the functional purpose of the investigator as a procedural figure, the legislative limitation of it only to “accusatory function” is an important argument regarding the feasibility of introducing the provisions of “adversarial” criminalistics. This provision is already quite clearly defined in the Criminal Procedure Code of Ukraine (§ 2 of Chapter 3 of the Criminal Procedure Code of Ukraine). In particular, Art. 40 of the Criminal Procedure Code of Ukraine determines the powers of the investigator as the prosecution. The role of an autonomous and procedurally independent investigator who must make responsible decisions and perform an important function of collecting and documenting evidence (the function of investigation) is currently substantially limited by procedural mechanisms (judicial control, procedural guidance by the prosecutor, etc.). In this regard, the investigator actually becomes a “supporting” procedural figure.

In the modern period there are heated scientific discussions about “criminalistic advocacy”, “criminalistic support of the activities of the prosecutor”, “criminalistic component of the court”. We are

¹ Шепитько В. Ю. Проблемы структурирования криминалистической тактики // Избранные труды. Харьков: Видавнична агенція «Апостіль», 2010. С. 152–155.

convinced that at present it is advisable to raise the question of the formation of “adversary” criminalistics. Criminalistic data should be used not only by the prosecution, but also by professional defense.

The question arises – should criminalistic tactics develop methods, techniques and means for defense activities or does it function only for the prosecution? The answer to this question lies in the purposes of the proceedings and the fundamental nature of the adversary procedure. If a defense lawyer seeks to establish the truth, restore justice and eliminate social conflict, the answer should be positive. Moreover, there is no other scientific knowledge that would provide lawyers with scientific methods, techniques and means, except for criminalistics. The most important areas of criminalistic support of lawyers (bar-rister) activities should include: 1) criminalistic technical area; 2) criminalistic tactical and organizational and methodical area; 3) forensic and criminalistic area (special knowledge support).

Admissibility and legitimacy of means of criminalistics tactics

The problem of admissibility of the means of influence in criminal proceedings is highly relevant. criminalistic tactics can be considered as a system of permissible means of psychological influence on parties to the criminal procedure (witnesses, victims, suspects, defendants, etc.). Influence has positive qualities and does imply any elements of coercion¹ (unlike to the violence). The

use of tactical means (tactical techniques, tactical recommendations, tactical combinations, tactical operations) implies knowledge of the psychological mechanism of their implementation.

Psychological impact forms the basis of forensic tactics. Impact (in psychology) – is a purposeful transfer of movement and information from one participant to another². The term “psychological impact” indicates its target direction – the human psyche. Any communication, any interaction is primarily a psychological impact on the interlocutor³. In the context of an interaction, each person performs both the role of the object and the subject of communication. As a subject, he/she cognizes other participants in communication, shows interest in them, and perhaps indifference or hostility. As a subject, who solves a certain task in relation to them, he/she influences them. At the same time, he/she is the object of cognition for all others involved in the interaction. He/she turns out to be an object for their feelings, which they try to influence, affect in some way⁴.

What level of impact is admissible in criminal proceedings? The International Covenant on Civil and Political Rights (adopted by resolution 2200 A (XXI) by the UN General Assembly

¹ Коновалова В. Е., Сербулов А. М. Тактика допроса при расследовании преступлений. Киев: РИО МВД УССР, 1978. С. 104.

² Психология. Словарь / под общ. ред. А. В. Петровского, М. Г. Ярошевского. – 2-е изд., испр., и доп. Москва: Политиздат, 1990. С. 58.

³ Доспулов Г. Г. Психология допроса на предварительном следствии. Москва: Юрид. лит., 1976. С. 51.

⁴ Бодалев А. А. Психология о личности. Москва: МГУ, 1988. С. 75.

of December 16, 1966) states that no one should be subjected to torture or cruel, inhuman or degrading treatment or punishment (Article 7)¹. According to Article 5 of the Code of Conduct for Law Enforcement Officials – “No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment”². Thus, international documents provide a total prohibition of some forms of impact. In addition, Ukraine of January 26, 1987, ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted by the UN General Assembly on December 10, 1984 resolution 39/46)³.

In the history of the law enforcement agencies there were periods when physical influence was permissible in their activities. In particular, the Letter

of the Central Committee of the All-Union Communist Party of the Bolsheviks of January 10, 1939 (to the secretaries of the regional committees, territorial committees, the Central Committee of the National Communist Party, the people’s commissar of internal affairs, the chiefs of the People’s Commissariat for Internal Affairs (NKVD)) said that the use of physical force in the NKVD practice, was acceptable since 1937 with the permission of the Central Committee of the All-Union Communist Party, as an exception, and, moreover, in relation to only such obvious enemies of the people, using humane interrogation methods... In addition, it was stated in the letter that the Central Committee of the Communist Party of the Soviet Union considered that the method of physical influence was to be applied and henceforth, as an exception, in relation to overt and implacable enemies of the people, as an absolutely correct and rational method.

It is significant that only in 1953 an order was issued by the USSR Ministry of Internal Affairs № 0068 of April 4, 1953 to ban torture in the Ministry of Internal Affairs, signed by L. Beria. This order states that it is necessary “1. Strictly prohibit the use of any measures of coercion and physical force against arrested persons in the bodies of the Ministry of Internal Affairs; in the course of the investigation, strictly observe the norms of the criminal procedure code. 2. To eliminate in Lefortovo and internal prisons, organized by the leadership of the former Soviet Ministry

¹ Міжнародний пакт о гражданских и политических правах [Електронний ресурс]. Режим доступа: http://zakon.rada.gov.ua/laws/show/995_043

² Кодекс поведения должностных лиц по поддержанию правопорядка [Електронний ресурс]. Режим доступа: http://un.org/ru/document/de.../code_of_conduct.shtml

³ Конвенція проти катувань та інших жорстоких, нелюдських або таких, що принижують гідність, видів поводження і покарання [Електронний ресурс]. Режим доступа: <https://zakon.rada.gov.ua/laws/term>

of State Security premises for the use of physical measures against the arrested, and to destroy all the torture instruments»¹.

The criminal and criminal procedural legislation of Ukraine regulates the provisions prohibiting individual means of influence in certain cases. So, p. 1 art. 18 of the Criminal Procedure Code of Ukraine establishes that no one can be forced to admit his/her guilt in committing a criminal offense or forced to give explanations, testimonies that can be used as the basis for suspicion, or a charge of a criminal offense. Article 373 of the Criminal Code of Ukraine provides for criminal liability for coercion to testify (by illegal actions on the part of the person conducting the inquiry or pre-trial investigation), and Art. 127 of the Criminal Code of Ukraine – for torture (intentional infliction of severe physical pain or physical or moral suffering by beating, torture, or other violent actions in order to induce the victim or another person to perform actions contrary to their will).

Amnesty International, an international human rights organization, criticized the state of human rights in Ukraine in 2017–2018, in particular, pointed out the lack of progress in the investigation regarding the so-called “secret prisons” of the Security Service of Ukraine; tortures, inflicted by law enforcement officials. Every year, the ECHR takes dozens of decisions, reit-

erating the absence of an effective torture investigation system in our country. According to the official data of the health care institutions, in 2017, almost 2,500 people sought medical assistance due to injuries caused by the police. However, before the trial in 2017, only 9 criminal cases were filed under the article “torture” (Article 127 of the Criminal Code of Ukraine)².

Tactical means should not be based on violence, threats and other illegal methods. Tactical techniques should be characterised by high moral parameters, which do not allow humiliation of the person or creation of an environment that psychologically distorts the perspective of criminal proceedings³. In the special literature, attention was drawn to the problems of the use of illegal influence in the activities of law enforcement bodies in Ukraine⁴.

It is important to distinguish between psychological impact and mental abuse. Mental abuse (violence) should not be permissible in the work of law enforcement agencies. Mental abuse should be understood as any act (or omission), which in form, direction and intensity leads to a decrease in human mental activity or, as a result of losing will, de-

¹ Арест Л. П. Берии совпал с Международным Днем борьбы с пытками [Электронный ресурс]. Режим доступа: an-babushkin.livejournal.com/820322.html

² Як катують в Україні // Українська правда. 28 вересня 2018 [Електронний ресурс]. Режим доступу: Pravda.com.ua

³ Коновалова В. Е. Криминалистическая тактика: состояние и перспективы // Актуальные проблемы уголовного процесса и криминалистики на современном этапе: межвуз. сб. науч. тр. Одесса: Одесский ун-т, 1993. С. 151.

⁴ Беца А. Аргумент «третьей степени» // Зеркало недели. 2002. №45 (429). С. 6.

prives him/her of the opportunity to choose a position¹.

In forensic literature, the question of the use of deception in investigative activities is debatable. So, R. S. Belkin notes that deception (subject to certain restrictions) is one of the means to overcome counteraction to investigation. His assumption is a more or less adequate response to the prevalence and sophistication of counteraction, used by perpetrators of the offense as well as their accomplices, including corrupt law enforcement officials². There is another point of view that techniques, fundamentally based on a veiled deception, false information or ignorance of persons, involving magnetic storms, extrasensory sensations, hypnosis, etc. should be excluded from the practical activities of the investigator (judges, prosecutors)³.

Tactical instruments should be based on various methods of permissible psychological impact. Methods of impact may differ in their intensity. The attitude to techniques and methods based on the use of suggestion – a one-way impact on human consciousness, the transfer of information without its critical understand-

ing – should be hard-headed. Suggestion is carried out with the help of a message, characterized by the unconscious perception of its content⁴. The danger of suggestion lies in the possibility of bona fide errors in the testimony. For these reason suggestive questions (containing elements of suggestion) or use of other tactical methods of interrogation (other investigative (search) actions), based on the mechanisms of suggestion, are banned.

Measures of criminalistic tactics should meet certain criteria (legal, moral, epistemological, psychological, etc.). The tactical means should comply with legal prescriptions, their cognitive value, scientific character, moral acceptability or ethical behavior. It should be pointed out that a tactical tool as a carrier of psychological influence differs from violence (mental or physical) in its positive direction, freedom in the choice of position and form of behavior.

Conclusions

The development of criminalistic tactics is considered in the period of the emergence of criminalistic knowledge and its formation, the transformation of scientific discipline from criminal – to criminalistic tactics. The main trends in the formation of the intellectual core of forensics (its most important section) have been identified. The attention is focused on the fact that regular patterns of psychological science were

¹ Звонков Б. Н. Проблемы этики и психологии расследования // Актуальные проблемы государства и права (Уголовное право, уголовный процесс, криминалистика). Краснодар, 1976. Кн. 1. С. 134.

² Белкин Р. С. Криминалистика: проблемы сегодняшнего дня. Злободневные вопросы российской криминалистики. М.: Норма-Инфра Москва, 2001. С. 114; Белкин Р. С. Криминалистика в процессуальной упаковке // Щит и меч. 10.XII. Москва, 1998. С. 5.

³ Более детально см.: Шепитько В. Ю. Теория криминалистической тактики: монография. Харьков: Гриф, 2002. С. 73, 74.

⁴ Велика українська юридична енциклопедія: у 20 т. Т. 20: Криміналістика, судова експертиза, юридична психологія / редкол. В. Ю. Шепітько (голова) та ін. Харків: Право, 2018. С. 495, 496.

used in the formation of criminalistic tactics.

Attempts have been made to study the subject of criminalistic tactics in the new, modern conditions. The factors, which influence changes in the content of criminalistic tactics, have been identified. An idea and arguments were suggested regarding the feasibility of introducing the provisions of “adversarial” criminalistics. The provisions of tactics and its means (tactical methods, tactical recommendations, tactical combinations, tactical operations) should be used by various subjects (investigator, investigating judge, prosecutor, barrister, judge).

Criminalistic tactics are considered as a system of permissible means of psychological influence on participants in the criminal procedure. Attention is drawn to international and European standards on the inadmissibility of illegal exposure in criminal proceedings (torture, physical violence, threats, other forms of mental violence, etc.), legislative prohibitions regarding certain forms of impact. The danger of using means of influence based on the mechanisms of suggestion and deception has been emphasized. A provision on the necessity of bringing forensic tactics into compliance with certain parameters and criteria has been formulated.

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